IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4801 of 2007

Ajit Shankarrao Ghorpade & Ors. .. Petitioners

versus

State of Maharashtra & ors. .. Respondents

...

Mr.P.K. Dhakephalkar i/b S.S. Patwardhan for the petitioners.

Mr.C.M. Korde for respondent no.2.

Mr.S.A. Sawant for applicant respondent no.4.

CORAM : S.B. MHASE AND

D.G.KARNIK, JJ

DATED : 31st October 2007

**ORAL ORDER (Per S.B.Mhase, J)**

1. Rule. By consent of the parties, rule returnable forthwith.

2. Heard.

3. The petitioners have approached to this Court under Article 226 of the Constitution of India

seeking writ and/or order or directions in the nature of mandamus to the respondent no.1 to withdraw the impugned order dated 30th March 2007 and further to direct the respondent no.1 to hold the elections to the Managing Committee of the respondent no.2 for the next turn forthwith.

4. The respondent no.2 is agricultural market committee established for the market area consisting of three talukas viz. Gavathe Mahakal, Jath and Miraj from the Sangli District. It is incorporated in view of the provisions of sections 11 and 12 of the Maharashtra Agricultural Produce Marketing (Development & Regulation) Act 1963 (hereinafter referred to as 'the said Act'). The market committee of the respondent no.2 was elected as provided in section 13 of the said Act on 4th December 2001. The first meeting of the market committee took place on 26th December 2001. The said committee was elected for a period of five years as provided under the said Act and therefore, the turn of the office bearers of the market committee of the respondent no.2 has come to an end by 25th December 2006. Since the term of the market committee expired on 25th December 2006, the respondent no.3 was under a statutory obligation to hold elections and constitute the new market committee in accordance with section 13 of the said

Act at the time of expiry of the period of the existing market committee. However, the elections have not been conducted by the respondent no.3 till date.

5. According to the respondents 1 and 3 the elections were not conducted by the respondent authorities in view of a notification issued under section 59 of the said Act which was published in a Government Gazette Part 4-B on 8th November 2006. The said notification provided that since the elections of the Zilla Parishad Samiti and other legal bodies were to take place and therefore in the public interest, the elections of the market committees in the State of Maharashtra, except those in respect of which Court had given directions to hold elections, shall be postponed till 31st March 2007; however after the said period is over, the elections shall be completed by 30th June 2007. No doubt, section 59 of the said Act gives power to the State Government to exempt the market committees from the certain provisions of the Act and therefore the elections were postponed. But however it requires to be mentioned that the postponement of the elections does not result into an extension of the period of the market committee because that power is a separate and distinct power than the power under section 59.

Section 14 of the said Act deals with the elections and the term of the office of the members of the market committee. Section 14 (3) reads as under :-

> Provided that whether the general elections of the members of the committee could not be held for reasons beyond the control of the committee before expiry of the term of the office of its members as aforesaid. The State Government may by order in Official gazette extend from time to time the term of any such committee so however that the period for which the term of office is so extended shall not exceed the period of one year in aggregate.

6. It is admitted position before this court that no orders and especially the official notification has not been issued by the respondent as provided under the above referred proviso of section 14(3) of the said Act and thereby the term of the office of the market committee of the respondent no.2 was not extended by the respondent as provided under the proviso to sub-section (3) of section 14 of the said Act. Learned counsel appearing for the

respondent tried to submit that the exemption under section 59 operates as an exemption in respect of section 14 also and therefore in view of any notification under section 59, no separate notification under section 14(3) was necessary. However, we would like to observe that under section 59, no doubt the power is with the respondent to exclude an application of a particular provision of the Act and exempt the market committee from the application of the certain provisions specified. However a bare look to the notification issued by the respondent no.1 on 8th November 2006, it will be clear that no exemption in respect of the provisions have not been claimed and declared by the respondent no.1. The only exemption which can be carved out is to postpone the elections of the market committees till 31st March 2007 and further directions that the elections to be completed by 30th June 2007 and therefore, we are not in agreement with the learned counsel that the term of the market committee has been extended as a result of the notification of section 59 dated 8th November 2006. The net result therefore is that the present market committee after 26th December 2006 is in the office without there being a valid extension in their favour.

7. The matter does not rest here because as

provided in the notification dated 8th November 2006 referred to above. The elections of the market committees were not conducted and completed by the respondent by 30th June 2007, in view of a further notification issued u/s.59 in a government gazette, Extraordinary Part 4-B dated 30th March 2007. As per the provisions of the Act, the election of the market committee is required to be taken by the Collector. However, after the notification was issued on 8th November 2006 it appears that the amendment was proposed in the Act to the effect that the elections of the market committees which have an income upto Rs.5 crores by way of a market fee shall be conducted by the District Dy. Registrar instead of a Collector and for the said purpose. The amendment has since been passed. In view of this amendment, now the elections of the market committee which have an income of more than Rs.5 crores, will only have to be conducted by the Collector and the market committees which have an income by way of a market fee upto Rs.5 crores shall have to be conducted by the District Deputy Registrar. The present market committee, we are told at bar is having income less than Rs.5 crores and therefore the elections will have to be conducted by the District Deputy Registrar as per amended provisions of the said Act. This amended Act has come into force from 1st June 2007. Therefore,

when the notification under section 59 was issued on 30th march 2007, the amended Act was not in force. It came into force on 1st June 2007 and therefore the District Dy. Registrar was competent to hold the elections of a market committee like that of the respondent no.2 since then. It is to be noted that the notification issued on 30th March 2007 provides for a transfer of an election process and so also a transfer of an amount deposited by the market committee with the collector to that of the District Dy. Registrar for holding the licence. However, it is pertinent to note that so far as respondent no.2 is concerned, the process of the elections of the respondent no.2 had not commenced in December 2001. Not only that, but the amount which is required to be deposited with the Collector for holding the elections was also not deposited, except an amount of Rs.1 lakh which was deposited for the preparation of the voters list. The voters list was finalised. Except this, what is important is to be noted that so far as election process is concerned, the election process is not commenced and therefore, there was no question of transfer of the election process from the Collector to the District Dy. Registrar. So also there was no question of the transfer of an amount from the Collector to the District Dy. Registrar and therefore, the District Dy. Registrar should have

immediately proceeded with the process of an elections as per the amended provisions of the said Act. However, on an assumption that the case of the respondent no.3 is covered under government notification dated 13th march 2007, the District Dy. Registrar has not proceeded with an election. Apart from that, we would like to make it clear that the notification dated 13th March 2007 also does not extend the period of the market committee which has already expired on 26th December 2006 as stated earlier. Therefore, viewed from any angle and it would be clear that the present market committee which is in the office is not in accordance with the provisions of law. In fact, taking into consideration this aspect, the respondent should have exercised the powers of an appointment of an administrator under section 15-A of the said Act.

8. Under these circumstances, the petitioners have approached to this court for the direction to withdraw the notification and order dated 30th March 2007 issued under section 59. What we find that in the facts and circumstances of the case, it is not necessary to give any directions to withdraw the said notification. Since we have noted that the said notification is not applicable qua the respondent no.2 in the facts and circumstances stated above and

therefore, we find it appropriate to issue any directions to hold an election of the respondent no.3.

9. Our attention has been drawn by the intervenor who has been added as respondent no.4 to the fact that the respondent no.3 has already started a process of trifurcation of the respondent no.2 market committee. In view of the provisions of section 44 of the said Act, we are told that the notice in accordance with the said section 44 has been already issued by the respondent no.3 in August 2007 for a consultation to the said marketing Board to have a consultation in respect of the trifurcation of the market committee and therefore, the learned counsel for the respondent submitted directions to hold the elections may not be given unless the process of the trifurcation is completed. We see no reason to withhold the elections. The request is, therefore, rejected.

(D.G. KARNIK, J) (S.B. MHASE, J)